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HAVERSTOCK & OWENS LLP
162 NORTH WOLFE ROAD
SUNNYVALE CA 94086

In re Application of

FEICK et al.

Application No.: 10/070,339

PCT No.: PCT/US01/32309

Int. Filing Date: 17 October 2001

Priority Date: 17 October 2000

Attorney Docket No.: 24717-719

For: METHOD AND APPARATUS FOR

COMMUNICATING DATA WITHIN MEASUREMENT
TRAFFIC

DECISION ON

PETITION

This communication is in response to applicants' submission filed 21 December 2005, which has properly been treated as a petition under 37 CFR 1.10(e).

BACKGROUND

On 17 October 2001, applicant filed international application PCT/US01/32309, which designated the United States and claimed a priority date of 17 October 2000. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 25 April 2002. The twenty-month period for paying the basic national fee in the United States expired at midnight on 17 June 2002.

On 27 February 2002, applicant filed, *inter alia*, a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, the U.S. Basic National Fee, the surcharge under 37 CFR 1.492(e) for submitting the oath or declaration later than twenty months from the priority date, and an assertion of small entity status.

On 18 November 2002, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating, *inter alia*, that an oath or declaration in compliance with 37 CFR 1.497(a)-(b) was required. The Notification set a two-month extendable period for reply.

On 17 January 2003, applicants filed a submission which included a declaration of inventors.

On 22 August 2003, a Communication was mailed indicating that the declaration of

inventors filed 17 January 2003 did not comply with 37 CFR 1.497(a)-(b). The Communication set a time limit of one month from the mailing date of the Communication.

On 03 November 2005, the DO/EO/US mailed a NOTIFICATION OF ABANDONMENT (Form PCT/DE/EO/909) indicating that the application was abandoned as to the United States of America for failure to reply to the NOTIFICATION OF MISSING REQUIREMENTS mailed 18 November 2002.

On 21 December 2005, applicants filed the instant submission which included, *inter alia*, a copy of the Customer Copy of the "Express Mail Post Office to Addressee" mailing label number EV333491699US, a copy of a transmittal letter filed 22 September 2003 itemizing five full sets of declarations of inventors, and five sets of declarations of inventors. The mailing label was addressed to "Mailstop PCT, Commissioner of Patents, PO Box 1450, Alexandria, VA 22313-1450" and shows a date of "92203" in the "Date In" box.

DISCUSSION

The evidence of record is sufficient to establish with reasonable certainty that the five sets of declarations of inventors were deposited with the United States Postal Service as an "Express Mail Post Office to Addressee" mailing on 22 September 2003. Specifically, the "Express Mail" label number ("EV333491699US") appears on the transmittal letter. As discussed above, the copy of the Customer Copy of this "Express Mail" label shows a "Date In" of 22 September 2003. The NOTIFICATION OF ABANDONMENT mailed 03 November 2005 is hereby vacated.

The declarations filed 22 September 2003 are in compliance with 37 CFR 1.497(a)-(b).

CONCLUSION

For the reasons set forth above, the petition under 37 CFR 1.10(e) is GRANTED.

The NOTIFICATION OF ABANDONMENT mailed 03 November 2005 is VACATED.

This application is being forwarded to the National Stage Processing Branch of the Office of PCT Operations to continue national stage processing of the application in accordance with this decision.



Daniel Stemmer

Legal Examiner

PCT Legal Affairs

Office of Patent Cooperation Treaty

Legal Administration

Telephone: (571) 272-3301; Facsimile: (571) 273-0459